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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Minnie Howard,

10 Plaintiff,

11 v.

12 NEWREZ LLC, et al.,

13 Defendants.
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No. CV-25-01111-PHX-KML

ORDER

15 Plaintiff Minnie Howard filed this suit in Maricopa County Superior Court alleging
16 claims for breach of contract, conversion, and consumer fraud against defendant NEWREZ
17 LLC (“Newrez”). Newrez removed the case to federal court based on diversity jurisdiction.
18 There is no dispute the parties are diverse, but Howard argues the amount in controversy
19 requirement is not met. Based on Howard’s own representations and the possibility that
20 attorneys’ fees will be awarded, Newrez has established there is more than \$75,000 in
21 controversy.

22 **I. Factual and Procedural Background**

23 Newrez is a mortgage lender that operates in Arizona. Howard obtained a mortgage
24 through Newrez that requires Howard maintain homeowners insurance. At all relevant
25 times, Howard “has had and continues to have homeowners insurance” that “is paid by
26 Newrez through her escrow account.” (Doc. 1-1 at 4-5.) Despite Newrez being aware
27 Howard has insurance, it “has repeatedly and knowingly asserted [Howard] does not have
28 insurance.” (Doc. 1-1 at 4.) Eventually Newrez “purchased separate insurance and billed

1 [Howard] for the unnecessary insurance.” (Doc. 1-1 at 4.)

2 Based on Newrez charging her for the duplicative insurance, Howard filed this suit
3 asserting three claims. First, Howard alleges Newrez breached the parties’ contract by
4 charging Howard for unnecessary insurance. (Doc. 1-1 at 5.) Second, Howard alleges
5 purchasing the unnecessary insurance with funds taken from her escrow account
6 constituted conversion. And third, Howard alleges Newrez violated the Arizona Consumer
7 Protection Act based on Newrez “knowingly misrepresent[ing] the lack of insurance
8 coverage” to obtain additional money from Howard. (Doc. 1-1 at 5.) Howard seeks awards
9 of compensatory and punitive damages as well as an award of attorneys’ fees as authorized
10 by Arizona law when a party prevails on a breach of contract claim. (Doc. 1-1 at 6.)

11 As required by Arizona Rule of Civil Procedure 72, when Howard filed her
12 complaint in Maricopa County Superior Court, she also filed a Certificate of Compulsory
13 Arbitration. (Doc. 1-1 at 13.) That certificate stated Howard’s case was not subject to
14 compulsory arbitration, meaning Howard believed the amount in controversy exceeded
15 \$50,000. Maricopa Cnty. Super. Ct. R. 3.10 (a). That amount “include[d] punitive damages,
16 but [did] not include interest, attorney’s fees, or costs.” Ariz. R. Civ. P. 72(b)(2).

17 Howard also designated her case as qualifying for “Tier 2” treatment. *See Rieke v.*
18 *ManhattanLife Assurance Co. of Am.*, No. CV-20-00724-PHX-GMS, 2020 WL 3056123,
19 at *1 (D. Ariz. June 9, 2020) (explaining “tier system” in state court). A Tier 2 case is one
20 of “intermediate complexity.” Ariz. R. Civ. P. 26.2(b)(2). The tier assignment can be
21 “based on the damages claimed in the action,” with Tier 2 encompassing those actions
22 “claiming more than \$50,000 and less than \$300,000 in damages,” not including “claims
23 for punitive damages, interest, attorney’s fees . . . and costs.” Ariz. R. Civ. P. 26.2(c)(3),
24 (e). But the basis for tier assignment is the expected complexity of the case, such as the
25 amount of evidence and witnesses that will be required, not simply the amount of damages
26 at issue. Ariz. R. Civ. P. 26.2(b).

27 Relying in part on Howard’s certificate of compulsory arbitration and her
28 designation of Tier 2, Newrez removed the case to federal court. Howard then filed a

1 motion to remand.

2 **II. Analysis**

3 Diversity jurisdiction requires the parties be “citizens of different States” and “the
4 matter in controversy exceeds the sum or value of \$75,000.” 28 U.S.C. § 1332(a). The
5 parties agree they are citizens of different states, but they disagree whether more than
6 \$75,000 is in controversy. To remove the case from state court, Newrez’s notice of removal
7 was required to “include only a plausible allegation that the amount in controversy exceeds
8 the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S.
9 81, 89 (2014). Now that Howard has disputed the amount in controversy, both parties must
10 “submit proof” for the court to decide “by a preponderance of the evidence, whether the
11 amount-in-controversy requirement has been satisfied.” *Id.* at 88. The relevant “proof” may
12 include “the reality of what is at stake in the litigation, using reasonable assumptions
13 underlying the defendant’s theory of damages exposure.” *Ibarra v. Manheim Invs., Inc.*,
14 775 F.3d 1193, 1198 (9th Cir. 2015). And “when a statute or contract provides for the
15 recovery of attorneys’ fees, prospective attorneys’ fees must be included in the assessment
16 of the amount in controversy.” *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 922 (9th
17 Cir. 2019).

18 To support its position that more than \$75,000 is in controversy, Newrez cites
19 Howard’s designation of the case as qualifying for Tier 2 treatment and her certificate of
20 compulsory arbitration. Although the Tier 2 designation could have been based on
21 Howard’s belief her damages exceed \$50,000, that designation is not necessarily based on
22 the amount in controversy. The Tier 2 designation therefore provides minimal support for
23 concluding more than \$50,000 is in controversy. But Howard’s certificate of compulsory
24 arbitration is different. Courts routinely treat such certificates as concessions that at least
25 \$50,000 is in controversy, excluding attorneys’ fees. *See Treon v. Aetna Life Ins. Co.*, No.
26 CV-20-00529-PHX-JJT, 2020 WL 2537484, at *3 (D. Ariz. May 19, 2020) (“[A] plaintiff’s
27 certificate regarding compulsory arbitration sufficiently establishes an amount in
28 controversy of at least \$50,000, exclusive of attorneys’ fees.”). Doing the same here, the

1 issue is whether Newrez can point to other amounts that place an additional \$25,001 in
2 controversy.

3 When there is a possibility attorneys' fees will be awarded, the expected amount of
4 fees "must be included" when determining the amount in controversy. *Arias*, 936 F.3d at
5 922. Howard may recover her attorneys' fees if she prevails on her breach of contract claim,
6 and her complaint requests an award of those fees. A.R.S. § 12-341.01. Howard seems to
7 agree attorneys' fees already incurred may be considered in assessing the amount in
8 controversy, but she argues not-yet-incurred fees are a matter of "pure speculation." (Doc.
9 9 at 3.) The Ninth Circuit has rejected the "concern that calculating future attorneys' fees
10 is inherently too speculative." *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899
11 F.3d 785, 796 (9th Cir. 2018). So although future fees are not inherently too speculative,
12 the court may assess how likely an award is and the expected amount of future fees using
13 its "own knowledge of customary rates and . . . experience concerning reasonable and
14 proper fees." *Id.* at 795.

15 Newrez argues "parties in insurance bad faith cases often seek (and may be
16 awarded) significant attorney fees." (Doc. 8 at 5.) Newrez cites cases involving fee awards
17 of approximately \$48,000, \$180,000, and \$23,000. (Doc. 8 at 5.) Newrez does not explain
18 why those cases are appropriate comparators, and an award of \$23,000 would not be
19 sufficient in this case. But Arizona law allows "for the successful party to recover [its
20 attorneys' fees] under ordinary circumstances," and even a conservative estimate of the
21 amount of fees in this case pushes the amount in controversy over \$75,000. *Velarde v.*
22 *PACE Membership Warehouse, Inc.*, 105 F.3d 1313, 1319 n.5 (9th Cir. 1997).

23 It is more probable than not the hourly rates for counsel in this case are at least \$300
24 per hour. *See Greer v. T.F. Thompson & Sons, Inc.*, No. CV-10-799-PHX-SMM, 2012 WL
25 6164960, at *5 (D. Ariz. Dec. 11, 2012) (finding hourly rate of \$300.00 "reasonable for
26 insurance defense work in Phoenix"). If that rate applies, 84 hours of work will be sufficient
27 to bring the amount in controversy above \$75,000.

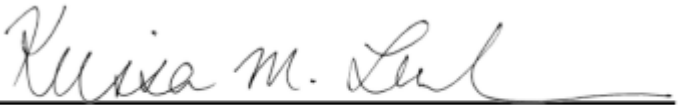
28 The parties have not provided much information regarding the expected scope of

1 discovery or motion practice. But they propose a schedule that would require dispositive
2 motions be filed in fifteen months. They also state “settlement/mediation is not imminent”
3 and if this case were to proceed to trial, “[t]he estimated length of trial is 5 days.” (Doc. 10
4 at 4.) Given the lengthy proposed case management schedule, the admission that early
5 settlement is not likely, and the expected trial length, it is more probable than not an award
6 of attorneys’ fees would exceed \$25,000. Combing those fees with the amount reflected by
7 Howard’s certificate of compulsory arbitration sufficiently establishes the amount-in-
8 controversy requirement is met.

9 Accordingly,

10 **IT IS ORDERED** the Motion to Remand (Doc. 5) is **DENIED**.

11 Dated this 19th day of May, 2025.

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15 **Honorable Krissa M. Lanham**
16 **United States District Judge**
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